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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,226	08/03/2006	Peter Kruger	KRUGER1	6463
1444 7590 12/02/2008 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER				
PARVINI, PEGAH				
ART UNIT		PAPER NUMBER		
1793				
MAIL DATE		DELIVERY MODE		
12/02/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,226

Applicant(s)

KRUGER ET AL.

Examiner

PEGAH PARVINI

Art Unit

1793

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/21/08 and 8/25/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 12, 14-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 12, 14-19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-089)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

The rejection of **claims 11-12, 14-17, and 21-22** under Title 35 U.S.C. 103(a) as being unpatentable over Takahashi et al. in view of Schmidt et al. as generally set forth in the previous Office Action is proper and stands.

The rejection of **claim 18** under Title 35 U.S.C. 103(a) as being unpatentable over Takahashi et al. in view of Schmidt et al. as applied to claims 11 and 17, and in view of Yamazaki et al. and further in view of Kuwata et al. as generally set forth in the previous Office Action is proper and stands.

The rejection of **claim 19** under Title 35 U.S.C. 103(a) as being unpatentable over Takahashi et al. in view of Schmidt et al. as applied to claim 11, and further, in view of Forestier et al. as generally set forth in the previous Office Action is proper and stands.

Response to Amendment

Applicants' amendment to claim 11, filed August 21, 2008 is acknowledged. As such, the Objection made to claim 11 and the rejection of said claim under Title 35 U.S.C. 112-second paragraph are withdrawn.

However, said amendment does not place the claim in condition for allowance.

Applicants' amendments to claims 16, and 21-22, filed August 21, 2008 are acknowledged. However, said amendments do not place the claims in condition for allowance.

Response to Arguments

Applicants' arguments filed August 21, 2008 and August 25, 2008 have been fully considered but they are not persuasive.

Applicants have argued that the limitation of "a single layer" in instant claim 11 has been overlooked.

The Examiner disagrees, and respectfully, submits that Takahashi et al. in paragraph [0014] (as it was cited in the previous Office Action as well) disclose pigments in which the flaky substrate is preferably a metal pigment coated with a silicon dioxide.

With reference to Applicants' indication to paragraph [0007] of the same reference, it is to be noted that said paragraph disclose one embodiment of the invention of Takahashi et al. as clearly stated in the paragraph.

Also, going back to the argument regarding the overlooking of "a single layer", it should be noted that as stated in the previous Office Action, the intermediate product of

Schmidt et al. (a platelet-like metal substrate coated with a layer consisting essentially of silicon oxide) would read on the limitation of instant application.

With reference to Applicants' argument that Takahashi et al. and Schmidt et al. require plural layers over the substrate, the Examiner, respectfully, submits that as noted above, the plural layer over the substrate in Takahashi et al. refers to one embodiment of that invention, and with reference to Schmidt et al., the intermediate product of said invention would read on the limitation of instant application.

Applicants have argued that even if considering that the intermediate product of Schmidt et al. read on the limitation of instant application, it would be irrelevant because applicants are not claiming the metal-effect pigment, but are instead claiming a cosmetic preparation which contains such a pigment.

The Examiner, respectfully, submits that as clearly disclosed by Takahashi et al., said silicon dioxide coated flaky substrates are utilized in cosmetics as stated in paragraph [0017].

Applicants have argued that Takahashi et al. teaches metal pigments coated entirely with silicon dioxide which are further coated with a metal oxide, and point to paragraph [0007].

The Examiner, respectfully, submits that as also stated above, paragraph [0007] of said invention states one embodiment of Takahashi et al. reference as also clearly stated so.

In addition, it is noted that the term "having" is an open term in the language of the claims which do not exclude the existence of any other layers on the layer encapsulating the metal substrate.

With reference to Applicants' argument stating that both documents (i.e. Takahashi et al. and Schmidt et al.) teach the skilled person to provide metal-effect pigments having a strong interference color whereas the metal-effect pigments of the present invention do not have any interference colors, it is to be noted that said characteristics are properties; while, the limitations of the claims of the instant invention, specially claim 11, is considered to be met by the combination of the references as presented in the previous Office Action, no further specific limitation is seen in the instant claims to differentiate them from the teachings of the combination of the references to exclude the existence of any interference colors. In addition, it is noted that the features upon which applicant relies (i.e., interference colors) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PEGAH PARVINI whose telephone number is (571)272-2639. The examiner can normally be reached on Monday to Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. P./
Examiner, Art Unit 1793

/Michael A Marcheschi/
Primary Examiner, Art Unit 1793